

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DONALD L. HOWELL,

Plaintiff,

Civil No. 04-1883-AS

v.

O R D E R

GUY HALL, et al.,

HAGGERTY, Chief Judge:

On June 23, 2006, Magistrate Judge Ashmanskas issued a Findings and Recommendation [50] recommending that Defendants' Unenumerated 12(b) Motion to Dismiss [38] should be GRANTED, and plaintiff's Complaint [4] should be DISMISSED without prejudice. The Findings and Recommendation concluded that all remaining motions should be DENIED as moot.

Objections to the Findings and Recommendation were filed in an untimely manner and could be rejected on those grounds alone. Alternatively, even if the objections were timely, they would be overruled.

When a party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate's report. 28 U.S.C. § 636(b)(1)(B); *McDonnell Douglas Corp. v. Commodore Bus. Mach.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Despite the objections' untimeliness, this court has carefully reviewed the objections and has performed that determination.

The Findings and Recommendation provides a thorough recitation of the relevant facts, and this background need not be recounted here. Plaintiff's Complaint alleges Eighth and Fourteenth Amendment violations based upon the defendants' removal of plaintiff's lunch bag from his cell. Plaintiff failed to exhaust his administrative remedies regarding his claims.

The Findings and Recommendation carefully examined plaintiff's claims as well as the applicable (and binding) administrative rules for grievances and complaints such as those asserted by plaintiff. The reasoning presented in the Findings and Recommendation is sound, correct, and entitled to adoption. Plaintiff may refile a Complaint after exhausting Oregon's prison administrative complaint process as to his claims.

The Findings and Recommendation [50] is adopted. Defendants' Unenumerated 12(b) Motion to Dismiss [38] is GRANTED. Plaintiff's Complaint [4] is DISMISSED without prejudice. All remaining motions are DENIED as moot.

IT IS SO ORDERED.

Dated this 11 day of August, 2006.

/s/Ancer L. Haggerty

Ancer L. Haggerty
United States District Judge